

SENATE BILL NO. 992

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 992 with my recommendations for reconsideration.

This bill seeks to modify the New Jersey Law Against Discrimination ("LAD") regarding compensation discrimination in a number of ways. Compensation discrimination on the basis of gender is illegal and has no place in our modern workforce or our State. Throughout my Administration, I have signed a number of bills that enhance the ability of employees to enforce their right to be free from discrimination in the workplace, including bills that require employers to notify their employees of their right to be free from pay and benefits discrimination and prohibit retaliation against employees who discuss their compensation in order to investigate possible discrimination.

While there are a number of provisions in this bill that I unequivocally support, there are also several provisions that should be adjusted in light of New Jersey's LAD, the considered jurisprudence of the New Jersey Supreme Court, and recent modifications of federal law.

This bill provides that a discriminatory act related to wages that is already unlawful under the LAD occurs each occasion that compensation is paid, thus "restarting" the applicable statute of limitations with each paycheck. In this regard, the bill conforms with current New Jersey Supreme Court precedent and federal law under the Lilly Ledbetter Fair Pay Act of 2009 ("Lilly Ledbetter Act"). However, the bill provides absolutely no limitation on the amount of back pay an employee can recover when claiming wage discrimination. As I expressed previously when a similar provision reached my desk, unlimited

back pay for wage discrimination claims departs significantly from well-established law. Instead of providing for unlimited back pay for employees, I am recommending that this bill mirror the provisions of the Lilly Ledbetter Act and the well-established precedent of the New Jersey Supreme Court to limit back pay to two years. There is no reason for our law to go beyond the Lilly Ledbetter Act; the sponsors certainly should not object to matching the federal law they so often cite as a model.

The bill also prohibits employers from requiring employees to shorten the statute of limitations or waive any of the protections of the NJLAD. While I agree that employees should not be required to waive their substantive right to be free from unlawful discrimination as a condition of employment, the prohibition against an employer requiring an employee to shorten the statute of limitations for such claims is contrary to state law and unduly constrains an employer's and employee's ability to negotiate the terms of employment. Thus, I am recommending that the bill be modified to remove that prohibition to align with the current law.

The bill would also materially change the legal standard for establishing wage discrimination. In its current form, the bill would eliminate any consideration of whether employees' work was equal and whether they undergo similar working conditions. It would require an oversimplified comparison of wages while ignoring any consideration of the employer's practices or facilities. This is nonsensical and makes New Jersey very business unfriendly. I will not tolerate that issue being exacerbated by this bill. While I support an explicit prohibition on wage discrimination on the basis of gender, I recognize that the identification of unlawful wage

discrimination requires an intensive fact-based evaluation of the workplace and positions. This bill eliminates that requirement. That is wrong. Therefore, I am recommending that this bill be amended to reflect the standard required by New Jersey Supreme Court decisions.

The bill also authorizes the award of treble damages for violations of the wage discrimination and disclosure provisions of this bill. Neither State nor federal law authorizes treble damages for these types of claims. The sponsors would make New Jersey a liberal outlier. Employees who are able to prove unlawful wage discrimination are entitled to back pay, as well as any other remedy available under the law. Accordingly, I am recommending that this bill be amended to remove the award of treble damages to remain consistent with well-settled State and federal law, and to not set New Jersey backwards.

Finally, this bill requires any employer that contracts with the State to continually report to the Department of Labor and Workforce Development demographic information and total compensation of every employee working on a contract. This is outrageous bureaucratic red tape creation. As I expressed when I vetoed nearly identical legislation last session, this provision would not meaningfully improve New Jersey's anti-discrimination laws. Instead, it would merely impose another burdensome reporting mandate upon the businesses of this State.

My recommendations will ensure that employee rights are clearly delineated, and will establish additional, common-sense protections to give employees significant tools to confront discrimination within the workplace and promote equality throughout New Jersey.

Accordingly, I herewith return Senate Bill No. 992 and recommend that it be amended as follows:

Page 2, Title, Line 2:

Delete "requiring public contractors to report certain"

Page 2, Title, Line 3:

Delete "employment information,"

Page 3, Section 1, Lines 30-38:

Delete in their entirety and insert "With respect to discrimination in compensation or in the financial terms or financial conditions of employment, in addition to any relief authorized by the laws of this State, an aggrieved person may obtain recovery of back pay for up to two years preceding the filing of the complaint."

Page 3, Section 1, Line 43:

Delete "to consent to a"

Page 3, Section 1, Line 44:

Delete "shortened statute of limitations or"

Page 13, Section 1, Line 15:

After "for" insert "or disclosure of"

Page 13, Section 1, Line 22:

After "disclosures." insert "Nothing in this subsection shall be construed as protecting an employee from disclosing information regarding the rate of compensation, including benefits, of another employee or former employee without the other employee's or former employee's prior permission. Further, nothing in this subsection shall be construed as protecting an employee who has access to the compensation information of other employees as part of the employee's essential job functions who discloses the compensation of such other employees to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of a formal investigation, proceeding, hearing or action under this chapter, including an

investigation conducted by the employer, or consistent with the employer's legal duty to furnish information."

Page 14, Section 1, Line 22:

Delete "similar" and insert "equal"

Page 14, Section 1, Line 24:

After "responsibility" insert ", and which are performed under similar working conditions"

Page 14, Section 1, Line 29:

After "merit system," insert "a system which measures earnings by quantity or quality of production,"

Page 14, Section 1, Line 33:

Delete ", or the quantity or quality of production"

Page 14, Section 1, Lines 44-45:

Delete in their entirety

Page 15, Section 2, Line 19:

Delete ", or any"

Page 15, Section 2, Line 20:

Delete in its entirety

Page 15, Section 2, Line 21:

Delete "or t. of section 11 of P.L.1945, c.169 (C.10:5-12),"

Page 15, Section 3, Lines 45-48:

Delete in their entirety

Page 16, Section 3, Lines 1-47:

Delete in their entirety

Page 17, Section 4, Lines 1:

Delete "4." and insert "3."

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Thomas P. Scrivo

Chief Counsel to the Governor